6

D.B. CENTRAL EXCISE APPEAL NO.79/2006.
[UNION OF INDIA VS. M/S JAIN PLAS PACK [P] LTD.
&ANR.
DATED : 11.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.V.K.Mathur for appellant.

*****

Heard learned counsel for the appellant.

In appeal is the order passed by the Customs Excise and Service Tax Appellate Tribunal dated 03.08.2005 allowing the appeal of the respondent No.1 by setting aside the demand of Rs.72,707/- as the duty adjudicated on alleged clandestine removal of the fabric from the factory and like amount of the penalty levied by the Adjudicating Officer.

The respondent manufacturer has paid duty on removal of its product from the factory premises as per the register-I required to be maintained by him under statutory provisions. On visit of the premises by the Excise Authorities on 11.09.1997 a register was found. According to the Adjudicating Officer the said register was maintained for registering the product at the factory. Its comparison with register maintained in RG-1 form showed difference in stock and, therefore, assuming it to be a case of clandestine

removals of goods, the Adjudicating Officer levied the duty of stock so removed at Rs.72,707/- and levied penalty of the like amount.

The manufacturer's case from the beginning was that the register found during the visit of Excise Authorities in question was not a register maintained for recording production but was a document maintained for the purpose of keeping supervision over the factory workers and on their daily production was entered on estimate basis only. Before entries were made in RG-1 the product was actually weighed and actual weight was entered in RG-I. In support of this contention, the manufacturer had also produced a chart of procuring raw material and its corresponding production. This explanation had not been accepted by the Adjudicating Officer.

However, the Tribunal found the explanation to be plausible and considering the fact that no attempt was made by Adjudicating Officer to verify the correctness of explanation put forward by the manufacturer in light of corroborative material produced by about the procurement and disposition of the raw material, there was no reason to doubt the correctness of the material. In view thereof the explanation furnished by the manufacturer was accepted by the Tribunal and the levy of the

duty as well as the penalty was deleted.

The aforesaid narration clearly goes to show that findings reached by the Tribunal are findings of fact and does not give rise to question of law.

Accordingly, the appeal fails and is hereby dismissed.

[CHATRA RAM JAT]J. **[RAJESH BALIA], J.**

mamta